

Jamilla Moore (SBN 177733)
The Law Office of Jamilla Moore
P.O.B. 582173
Elk Grove, CA 95758
(415) 728-9808
jmoorelawoffice@gmail.com

Attorney for Debtors

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

***IN RE MICHAEL D. DUNN [xx6648] /
MARIA DO CARMO DUNN [xx0622]***

CASE NO. 11-30190
Chapter 7

**MICHAEL D. DUNN and MARIA
DO CARMO DUNN**

Adversary Proceeding No.

Plaintiffs/Debtors

Perris Industrial, LLC; Briarwood Homes, LLC; Valley Foreclosure Services, LLC; Heller Development Company; Liberty Realty; Richard Heller, an individual; Kolleen Kelley, an individual; Eve Farr, an individual; Kimberly Sharp; an individual; DOES 1-100

Defendants

COMPLAINT

This is an adversary proceeding pursuant to Rule 7001, subsections (1) and (2) of the Federal Rules of Bankruptcy Procedure to determine the validity, priority or extent of Plaintiffs' and Defendants' respective interests in the real property located at 5306 Spring Canyon Street, North Las Vegas, Clark County, Nevada 89081 [Lot 9 in block one of Washburn-Bruce, as shown by map thereof on file in Book 102 of Plats,

1 Page 39, and amended by certificate of Amendment recorded November 16, 2001 in
2 Book 20011116 as Document No. 01181; July 17, 2002 in Book 20020717 as
3 Document No. 02398; and July 24, 2002 in Book 20020724 as Document No. 00904 in
4 the Office of the County Recorder of Clark County, Nevada], hereinafter referred to as
5 the “subject property”).

6

7 **JURISDICTION AND VENUE**

8 1. The Court has jurisdiction over this lawsuit because it involves a core matter
9 pursuant to 28 U.S.C. § 1334 and 28 U.S.C. §§ 157(a), (b)(2)(A), (b)(2)(B),
10 (b)(2)(G).

11 2. This adversary proceeding relates to *In re Michael D. Dunn and Maria Do*
12 *Carmo Dunn*, a Chapter 7 case pending before the United States Bankruptcy
13 Court for the Northern District of California, Oakland Division, docketed as
14 case number 11-30190.

15 3. Venue for this matter is proper pursuant to 28 U.S.C. § 1409.

16 4. This adversary proceeding constitutes a core proceeding pursuant to 28 U.S.C. §
17 157(b)(2)(F).

18 **PARTIES**

19 5. Plaintiffs are the Petitioners/Debtors in *In re Michael D. Dunn and Maria Do*
20 *Carmen Dunn*, a Chapter 7 case pending before the United States Bankruptcy
21 Court for the Northern District of California, San Francisco Division, docketed
22 as case number 11-30190. Plaintiffs are the owners/occupiers of the subject
23 property. Plaintiff Michael Dunn is a disabled person protected by the
24 American Disabilities Act and analogous state statutes. Plaintiff Maria Do
25 Carmo Dunn speaks Portuguese as her first written and spoken language and
26 has limited ability to understand written and spoken English; she also is a

disabled person.

6. At all times mentioned herein, all Defendants were conducting interstate business with Plaintiffs. From 2008 through the present time, all Defendants have conducted business with Plaintiffs in Clark County, Nevada; Contra Costa County, California; and San Francisco County, California.
7. In 2008, when the contracts, transactions and communications at issue herein were first initiated, Plaintiffs resided in the State of California. From 2008 through the present time, the subject property has been Plaintiffs' owner occupied residence. During the same period; Plaintiffs concurrently have been parties to a California lease agreement that was executed years prior to their purchase of the subject property in 2008.
8. From approximately January 2008 through approximately September 2010, Plaintiffs were in residence at the subject property. From approximately September 2010 through the present, Plaintiffs are temporarily residing in California while they both obtain various medical services. Plaintiffs intend to resume owner occupation of the subject property when they are medically able to do so.
9. At all times mentioned herein, Defendant Perris Industrial, LLC, was a mortgage lender conducting interstate business from its corporate headquarters at 18520 Burbank Blvd., #200, Tarzana, California 91356.
10. At all times mentioned herein, Defendant Briarwood Homes, LLC, was a mortgage lender conducting interstate business from its corporate headquarters at 18520 Burbank Blvd., #200, Tarzana, California 91356.
11. At all times mentioned herein, Defendant Heller Development Company, was a realtor, real estate agent and/or real estate broker conducting interstate business from its corporate headquarters at 2620 Regatta Drive, #102, Las Vegas,

1 Nevada 89128.

2 12. At all times mentioned herein, Defendant Liberty Realty, was a realtor, real

3 estate agent and/or real estate broker conducting interstate business from its

4 corporate headquarters at 2920 South Durango Blvd., Las Vegas, NV 89117.

5 13. At all times mentioned herein, Defendant Valley Foreclosure Services, was the

6 foreclosing trustee for the subject property and was conducting interstate

7 business from its corporate headquarters at 1880 E. Warm Springs Rd. #100,

8 Las Vegas, NV 89119.

9 14. At all times mentioned herein, Defendant Richard Heller was "Manager" or

10 otherwise an executive, employee, agent and/or representative of Heller

11 Development Company, and also as an individual was as a realtor, real estate

12 agent and/or real estate broker conducting interstate business from its corporate

13 headquarters at 18520 Burbank Blvd., #200, Tarzana, California 91356 and

14 2620 Regatta Drive, #102, Las Vegas, Nevada 89128.

15 15. At all times mentioned herein, Defendant Kolleen Kelley was an executive,

16 employee, agent and/or representative of Liberty Realty, and also as an

17 individual was as a realtor, real estate agent and/or real estate broker conducting

18 interstate business from its corporate headquarters at 2920 South Durango

19 Blvd., Las Vegas, NV 89117.

20 16. At all times mentioned herein, Defendant Eve Farr was an executive, employee,

21 agent and/or representative of Liberty Realty, and also as an individual was as a

22 realtor, real estate agent and/or real estate broker conducting interstate business

23 from its corporate headquarters at 2920 South Durango Blvd., Las Vegas, NV

24 89117.

25 17. At all times mentioned herein, Defendant Kimberly Sharp was an executive,

26 employee, agent and/or representative of Liberty Realty, and also as an

27

1 individual was as a realtor, real estate agent and/or real estate broker conducting
2 interstate business from its corporate headquarters at 2920 South Durango
3 Blvd., Las Vegas, NV 89117.

4 18. Plaintiff is not aware of the true names and capacities of the defendants
5 sued as DOES 1 through 250, inclusive, and therefore sues such defendants by
6 such fictitious names. Each of these fictitiously named defendants is
7 responsible in some manner for the activities alleged in this Complaint.
8 Plaintiff will amend this Complaint to add the true names of the fictitiously
9 named defendants once they are discovered.

10 19. The defendants identified in paragraphs 1 through 18, *supra*, shall hereinafter be
11 referred to collectively as "Defendants."

12 20. Whenever reference is made in this Complaint to any act of any Defendant that
13 allegation shall mean that each defendant acted individually and jointly with the
14 other Defendants.

15 21. Any allegation about any acts of any corporate or other business entity
16 means that the corporation or business did the acts alleged through its officers,
17 directors, employees, agents and/or representatives while they were acting
18 within the scope of their authority and/or employment. Defendants acted in
19 many and conflicting capacities throughout the transactions underlying this
20 complaint, purporting to be different things at different times – lender or note
21 holder, loan servicer, debt collector, seller of the property, all to enable
22 themselves to circumvent the requirements of law.

23 22. At all relevant times each Defendant committed the acts, caused or
24 directed others to commit the acts, or permitted others to commit the acts
25 alleged in this Complaint. Some or all of the Defendants acted as the agent of
26 the other Defendants and all of the Defendants acted within the scope of their

1 agency if serving as another's agent.

2 23. At all relevant times each Defendant knew or should have known that the

3 other Defendants were engaged in or planning to engage in the violations of law

4 alleged in this Complaint. Each Defendant nevertheless facilitated the

5 commission of those unlawful acts. Each Defendant intended to and

6 encouraged, facilitated, or assisted in the commission of the unlawful acts.

7 24. At all relevant times the Defendants have engaged in a conspiracy, common

8 enterprise and/or common course of conduct, the purpose of which was to

9 engage in the violations of law alleged in this Complaint. This conspiracy,

10 common enterprise and/or course of conduct continues to the present.

11 25. The violations of law alleged in this Complaint were made by businesses and

12 individuals engaged in interstate commerce, and occurred in part in Contra

13 Costa County, California and in part in Clark County, Nevada.

14

15 **BACKGROUND FACTS – ALLEGATIONS COMMON**
TO ALL CAUSES OF ACTION

16

17 26. The events giving rise to the causes of action herein began in approximately

18 January 2008, when employees and/or agents of Defendants duped Michael and

19 Maria Dunn – a permanently disabled and, at the time, medically compromised

20 retired shipworker and his beautician/foster care provider spouse (who speaks

21 Portuguese as her first language, and is also disabled) into signing signing two

22 mortgage promissory notes and deeds of trust for real property that, then and

23 now, Debtors are informed and have reason to believe is worth less than the

24 value of the mortgage loans. Plaintiffs were led into signing two promissory notes

25 deeds of trust that established interest only payments, and bound Plaintiffs to – within

26 three years and three months – secure new mortgage financing or come up with a lump

27

1 sum payment of over \$270,000 during or before April 2011. Defendants knew or
2 should have known that this house of cards would fall even if the national mortgage
3 crisis of the past two years had not occurred. Defendants purposefully led the Dunns
4 into the foreclosure that Defendants Perris, Heller, and/or Valley now seek to quickly
5 implement with respect to one of the promissory notes.

6 27. On January 4, 2008, Defendant Heller transmitted a facsimile “counteroffer” on the
7 subject property to Defendants Liberty Realty and Farr. On January 7, 2008,
8 Defendants and Plaintiffs executed a document purporting to be “escrow instructions
9 & general provisions” with the following “additional terms”: “Seller to carry 1st trust
10 deed for a period of 40 months in the amount of \$135,000 and a second trust deed of
11 \$134,000 both @ 6.5% interest only amortized over 30 years paid on the fifteenth (15)
12 of each month. No prepayment penalty. If payment paid after 25th, 5% penalty on
13 payment amount of unpaid interest for the month. Buyer to pay the first 6 months
14 interest for both the 1st & 2nd trust deeds at COE which is to be released to seller at
15 COE so first monthly payment due 7/15/08. Property to have no liens or trust deeds
16 against property at COE. Commencing on July 15th, buyer is to pay one (1%) of the
17 unpaid principal balance monthly applied to reduce principal balance. Any month the
18 1% is not paid will result in a negative amortization and due on the 40th month.”

19 27. On January 10, 2008, Plaintiffs and Defendant Perris International, LLC, executed a
20 promissory note and deed of trust for the subject property for \$135,000. The rate for
21 initial six months of the loan was 6.5%; commencing with the July 2008 payment (7
22 months later), the note rate rose to 7.5%. The note established interest only
23 payments of \$843.75 per month for approximately three years. A “Rider to
24 Deed of Trust Secured By Deed of Trust” contains the following terms:
25 “Effective with the July 2008 payment, borrowers may elect to make monthly
26 interest payments at a rate of 6.50%, for a payment of \$731.25. However,
27

1 borrowers acknowledge that this monthly interest payment of \$731.21, IS NOT
2 sufficient to pay all of the monthly interest that will accrue on the Note.

3 Additionally, the unpaid monthly interest will be added to the principal amount
4 of the Note each month, and interest at the rate set forth in the Note will accrue
5 on the unpaid interest. Borrowers acknowledge that if all of the monthly
6 payments are made on time, at the 7.50% note rate, the principal amount of the
7 Note on the Maturity Date will be \$135,000.00.” This rider does not contain the
8 following material term that is found in the escrow instructions & general
9 provisions : “Commencing on July 15th, buyer is to pay one (1%) of the unpaid
10 principal balance monthly applied to reduce principal balance. Any month the 1% is
11 not paid will result in a negative amortization and due on the 40th month.”

12 27. On January 9, 2008, Plaintiffs and Defendant Briarwood Homes, LLC, executed a
13 promissory note and deed of trust for the subject property for \$134,000. The rate for
14 initial six months of the loan was 6.5%; commencing with the July 2008 payment (7
15 months later), the note rate rose to 7.5%. The note established interest only
16 payments of \$837.50 per month for approximately three years. A “Rider to
17 Deed of Trust Secured By Deed of Trust” contains the following terms:
18 “Effective with the July 2008 payment, borrowers may elect to make monthly
19 interest payments at a rate of 6.50%, for a payment of \$725.83. However,
20 borrowers acknowledge that this monthly interest payment of \$725.83, IS NOT
21 sufficient to pay all of the monthly interest that will accrue on the Note.

22 Additionally, the unpaid monthly interest will be added to the principal amount
23 of the Note each month, and interest at the rate set forth in the Note will accrue
24 on the unpaid interest. Borrowers acknowledge that if all of the monthly
25 payments are made on time, at the 7.50% note rate, the principal amount of the
26 Note on the Maturity Date will be \$134,000.00.” This rider does not contain the
27

1 following material term that is found in the escrow instructions & general
2 provisions : “Commencing on July 15th, buyer is to pay one (1%) of the unpaid
3 principal balance monthly applied to reduce principal balance. Any month the 1% is
4 not paid will result in a negative amortization and due on the 40th month.”

5 28. Plaintiffs made timely payments on both loans until approximately August
6 2010, when Mrs. Dunn’s poor health rendered her unable to work. On October
7 20, 2010, Defendants recorded a notice to default and election to sell the subject
8 property. On January 18, 2011, Plaintiffs filed a Chapter 7 bankruptcy petition,
9 electing to retain the subject property.

10 29. Defendants acted in many and conflicting capacities throughout the transactions
11 underlying this complaint, purporting to be different things at different times –
12 lender or note holder, loan servicer, debt collector, seller of the property, all to
13 enable themselves to circumvent the requirements of law. Plaintiffs were victims
14 of fraud and misrepresentation with respect to the inception, negotiation and
15 execution of the two promissory notes and deeds of trust for the subject
16 property, and are now subject to the wrongful foreclosure intended by
17 Defendants at the inception of the deed and loan contracts and throughout the
18 period of the mortgage. Plaintiffs, who were inexperienced with real estate
19 transactions and disabled, relied upon the false representations and material
20 misrepresentations of Defendants. Plaintiffs are informed and believe that they
21 were victims of fraudulent appraisal practices that inflated the value of the
22 property and thereby increased the monthly payments; Defendants charged and
23 obtained improper fees for placement of the loans as sub-prime; the combined
24 loans exceeded the reasonable expected value of the property at that time and in
25 the foreseeable future based upon expected and/or reasonably foreseeable market
26 changes; the loans paid excessive commissions, excessive appraiser fees and

1 lender service fees, and the amount of such commissions and identity of the
2 recipients were not disclosed to Plaintiffs.

3 30. As a result of Defendants' acts and omissions, Plaintiffs are on the verge of
4 losing their possession and ownership of the subject property; lost equity in the home,
5 their credit rating and/or history has been damaged, they have been deprived of access
6 to equity lines of credit, second mortgages and other loans previously available to
7 owners of primary residences, and they have incurred other material damages
8 including but not limited to reduced availability of goods and services tied to credit
9 ratings. Additionally, as a result of Defendants' acts and omissions, Defendants
10 illegally took from Plaintiff thousands of dollars in interest payments and fees.
11 Defendants acted outrageously and persistently with actual malice in performing the
12 acts alleged herein. Accordingly, Plaintiff is entitled to exemplary and punitive
13 damages in a sum according to proof and to other such relief as requested in the Prayer
14 for Relief.

15

16 **CLAIMS FOR RELIEF**

17 The following Causes of Action are asserted against the Defendants herein
18 without prejudice to any rights Plaintiff may have, or which this Court may
19 grant to Plaintiff, to assert additional causes of action or allegations based on
20 facts disclosed in documents or other information made available to the Plaintiff
21 in the future or developed as a result of discovery or otherwise.

22

23 **FIRST CAUSE OF ACTION** 24 **ABUSE OF A DISABLED INDIVIDUAL** 25 **[Against All Defendants]**

26 31. Plaintiff realleges and incorporates by reference the allegations of all causes of
27 action of this Complaint, *supra* and *ante*, as if fully set forth herein.

1 32. Plaintiff alleges that Defendants' actions arising from and related to the
2 solicitation and execution of the August 23, 2007 reverse mortgage constitute
3 abuse of disabled African-American individuals (Plaintiffs Michael D. Dunn
4 and Maria Do Carmo Dunn), exploitation and discrimination in violation of,
5 *inter alia*, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing
6 Amendments Act of 1988, which is commonly known as the federal Fair Housing Act
7 (FHA); and the Americans Disabilities Act (see 42 USC §3001 et seq.; 42 USC
8 §3002 et seq; 42 USC §12101 et seq. Defendants are liable for treble damages
9 and penalties because Defendants knew their conduct was directed at disabled
10 citizens. Defendants' conduct caused a disabled citizens to suffer substantial
11 loss of property and assets. Plaintiffs are disabled African-American citizens
12 more vulnerable than other members of the public to Defendants' conduct
13 because of his age, disabilities, impaired health and cognitive functioning; and
14 Plaintiffs actually suffered substantial economic damages as a result of
15 Defendant's conduct.

16 33. Defendants knew or had reason to know that Plaintiffs were unsophisticated in
17 real estate lending practices, and had no or a very limited understanding of the
18 terms of the subject real estate loan contract. Thus Defendants knew or had
19 reason to know that, because Plaintiffs were unsophisticated in real estate
20 lending practices, he would reasonably rely upon their representations regarding
21 Plaintiffs' qualifications for and ability to honor their legal obligations as he
22 was deciding whether to execute the mortgage loan contracts with Defendants.

23 34. Defendants made misrepresentations about the subject property mortgages and
24 deeds of trust that they knew were likely to be deceptive and misleading to
25 Plaintiffs, failed to disclose all material features, facts, risks and/or attributes of
26 the loans and deeds. Defendants gained the personal trust of Plaintiffs, had
27

1 access to their personal financial information and, through their unscrupulous
2 sales practices, induced Plaintiffs to enter into a the loan and deed contracts
3 transaction knowing they would be misled and deceived by those sales
4 practices.

5 35. Defendants used misleading, incomplete, excessively complex, confusing and vague
6 form documents and terms of real estate practice that could not be understood by
7 Plaintiffs.

8 36. Without conducting any meaningful negotiations, Defendants used their business
9 acumen and superior bargaining power – and the above-described form documents –
10 to maneuver Plaintiffs into signing adhesive contracts that they did not understand.

11 37. Consequently, Defendants and each them in their capacity as agents or representatives
12 of each other, engaged in elder abuse and financial abuse by intentionally made false
13 representations to, and concealed material facts regarding the terms, nature and effect
14 of the subject loan. Because Defendants' possess superior knowledge and special
15 information and expertise regarding mortgage loan financing transactions, their
16 representations to Plaintiffs must be treated as ones of material fact.

17 38. Plaintiffs relied upon Defendants' false and incomplete representations to their
18 legal and economic detriment and have as a direct and proximate result of
19 Defendants' acts and omissions suffered economic and additional damages
20 according to proof. Additionally, because Defendants and each of them acted
21 with malice and oppression, Plaintiffs are entitled to an award of punitive
22 damages.

23 **SECOND CAUSE OF ACTION**
24 **NEGLIGENCE AND NEGLIGENCE PER SE**
25 **[Against All Defendants]**

26 39. Plaintiffs reallege and incorporate by reference the allegations of all causes of
27 action of this Complaint, *supra* and *ante*, as if fully set forth herein.

1 40. At the inception of the promissory notes and deeds of trust in 2008,
2 Defendants owed Plaintiffs a legal duty to competently, accurately and
3 reliably communicate with Plaintiffs regarding all matters pertaining to the processing
4 and approval of Plaintiffs' loan application(s), including the duty to negotiate and
5 execute the transaction in understandable written English and in a language best
6 understood by each Plaintiff. Yet, Defendants provided Plaintiffs with contractual
7 agreements that were written only in English. Defendants did not provide Plaintiffs
8 with documents translated into the language known to Mrs. Dunn, Portuguese.

9 41. Defendants owed Plaintiffs a legal duty to refrain from commencing an
10 illegal foreclosure process against a greatly inferior and profoundly weaker party who,
11 to their detriment, relied upon representations made by Defendants' agents, employees
12 and representatives vis a vis the deeds of trust and promissory notes.

13 42. Defendants owed Plaintiffs a legal duty to comply with California and
14 Nevada statutes and perform their duties with honesty, professionalism, integrity, due
15 diligence and skill when negotiating and executing and assigning and substituting
16 trustees and/or beneficiaries with respect to loan modification, mortgage loan and/or
17 deed of trust contracts with and on behalf of borrowers such as Plaintiffs. Rather,
18 Defendants have committed multiple acts and omissions to breach their
19 legal duties to Plaintiffs, including but not limited to all acts and omissions alleged
20 *supra*, and fraudulently concealed institutionalized fraud begun in approximately 2008
21 through the present was willful, pervasive and strategic through mortgage loan
22 practices implemented with the knowledge of and/or at the direction of all Defendants'
23 corporate executives.

24 43. The losses to Plaintiffs described herein were the proximate and
25 foreseeable result of Defendants' intentionally concealed plan of executing fraudulent
26 sales for more than actual value of the mortgage notes and deeds of trust on the subject
27

property owned by Plaintiffs and others similarly situated.

44. In verbal and written communications with Plaintiffs, in their publications and contracts and/or on their websites employees and/or agents of Defendants made material misleading statements of fact to Plaintiffs that induced them to enter profoundly disadvantageous mortgage loan contracts designed to lead to an inevitable foreclosure. Additionally, Defendants engaged in fraud and fraudulent concealment in the execution of the loan and/or deed origination documents. .

45. The foreseeability of harm to the Plaintiff from Defendants' acts and failures to act under the peculiar circumstances presented by this case is a question of fact. Here, the wrongful foreclosure of Plaintiffs' subject property was a reasonably foreseeable result of the acts and omissions of Defendants as set forth herein and at trial according to proof.

**THIRD CAUSE OF ACTION
FRAUD AND FRAUDULENT MISREPRESENTATION
[Against All Defendants and DOES 1-20]**

46. Plaintiffs reallege and incorporate by reference the allegations of all causes of action of this Complaint, *supra* and *ante*, as if fully set forth herein.

47. Defendants and DOES 1-20 (all and each of them) as agents and/or employees and/or representatives of each other had a legal duty to competently, accurately and reliably communicate with Plaintiff regarding all matters pertaining to the processing and approval of Plaintiff's 2008 loans and deeds of trust. Defendants owed Plaintiffs a legal duty to competently, accurately and reliably communicate with Plaintiffs regarding all matters pertaining to all foreclosure activities pertaining to the subject property.

48. Defendants and DOES 1-20 (all and each of them) as agents and/or employees and/or representatives of each other had a legal duty to provide Plaintiff

1 with accurate, truthful and complete information regarding the terms of their mortgage
2 loan for purchase of the subject property.

3 49. Defendants knew or had reason to know that Plaintiffs were both
5 unsophisticated in real estate lending practices and disabled, and that Mrs. Dunn spoke
6 Portuguese as her primary language, thus both Plaintiffs a very limited understanding
7 of the detailed terms of the subject promissory note and deed of trust contracts. Thus
8 Defendants knew or had reason to know that, because Plaintiffs were unsophisticated
9 in mortgage lending practices, they would reasonably rely upon Defendants'
representations.

10 50. Further, Defendants failed to adequately inform Plaintiffs of the all
11 material terms and foreseeable conditions and risks associated with executing the loan
12 contract, including but not limited to foreseeable future conditions that would cause the
13 interest rate and/or the loan balance to increase, and foreseeable future conditions that would
14 cause a loss in equity.

15 51. Defendants used misleading, incomplete, excessively complex, confusing and
16 vague form documents that could not be understood by Plaintiffs. Without conducting any
17 meaningful negotiations, Defendants used their business acumen and superior bargaining
18 power – and the above-described form documents – to maneuver Plaintiffs into signing an
19 adhesive contract that they did not understand.

20 52. In addition, Defendants engaged in mortgage loan practices implemented with
21 the knowledge of and/or at the direction of their corporate executives to create false and
22 inflated property appraisals, and then use these false valuations to induce Plaintiffs and other
23 borrowers into mortgage loans on high-risk terms.

24 53. Consequently, Defendants and each them in their capacity as agents or
25 representatives of each other, intentionally made false representations to, and concealed
26 material facts from Plaintiffs. Because Defendants' possess superior knowledge and special

1 information and expertise regarding mortgage loan financing transactions, their
2 representations to Plaintiffs must be treated as ones of material fact. Defendants committed
3 fraud because they made knowing and intentionally false representations to induce Plaintiffs
4 to reasonably rely thereon, and there was resulting harm from that reliance. Defendants
5 committed constructive fraud because their acts, omissions and/or concealments involved a
6 breach of a legal or equitable duty, trust or confidence.

7 54. Plaintiffs relied upon Defendants' false and incomplete representations
8 to heir legal and economic detriment and have as a direct and proximate result of
9 Defendants' acts and omissions suffered economic and additional damages according
10 to proof. Additionally, because Defendants and each of them acted with malice and
11 oppression, Plaintiffs are entitled to an award of punitive damages.

12

13 **FOURTH CAUSE OF ACTION**
FRAUDULENT CONCEALMENT

14 **[Against All Defendants]**

16 55. Plaintiffs realleges and incorporates by reference the allegations of all
17 causes of action of this Complaint, *supra* and *ante*, as if fully set forth herein.
18 Defendants and DOES 1-20 (all and each of them), as the original lender(s) and/or
19 broker(s) and/or trustee(s) and/or servicer(s), had a legal duty to provide Plaintiffs with
20 accurate, truthful and complete information regarding their eligibility for the mortgage
21 loan for purchase of the subject property.

22 56. Additionally, during the course of the 2008 negotiations related to
23 and execution of the underlying loan and deed of trust transactions, and in all subsequent
24 contacts and communications, Plaintiffs relied upon and ultimately were harmed by
25 Defendants' fraudulent concealments of material fact related to how her eligibility for
26 mortgage financing would be and was calculated, and/or how the interest rate, principal

1 payments, fees and charges and other material terms of the loan would or could change during
2 the life of the loan. Additionally, Defendants concealed from Plaintiffs risk assessments
3 related to her future ability to perform in accord with these calculations and assessments.

4 57. Further, at all times mentioned herein, Defendants had and have exclusive
5 knowledge not accessible to Plaintiffs of undisclosed material facts pertaining to their
6 mortgage lending activities. These facts include but are not limited to false and/or negligent
7 appraisals, violation of Defendants' own underwriting guidelines, and the intent to securitize
8 Plaintiffs' mortgage above its actual value.

9 58. From 2008 and continuing to the present, Defendants' concealment
10 or suppression of material facts has had the same effect as a false representation. Had such
11 disclosures of material fact been made by Defendants, Plaintiffs would have engaged
12 in further negotiations with Defendants to obtain more favorable terms, and/or taken
13 their business elsewhere. Rather, Plaintiffs relied upon Defendants' false and
14 incomplete representations to her legal and economic detriment and has as a direct and
15 proximate result of Defendants' acts and omissions suffered economic and additional
16 damages according to proof. Additionally, because Defendants and each of them acted
17 with malice and oppression, Plaintiffs are entitled to an award of punitive damages.

18

19 **FIFTH CAUSE OF ACTION**
UNLAWFUL BUSINESS PRACTICES

20 **[Against All Defendants]**

22 59. Plaintiffs reallege and incorporate by reference the allegations of all
23 causes of action of this Complaint, *supra* and *ante*, as if fully set forth herein.

24 60. From 2008 and continuing to the present time, the acts, policies and
25 practices of all Defendants with respect to the subject property – including but not
26 limited to "negotiation" and execution of the mortgage loan contract, purported

assignments of the deed, non-assignments of the promissory note, the misrepresentations and failures to act vis a vis a loan modification or other act to prevent a foreclosure, and the wrongful foreclosure – alleged throughout this Complaint and incorporated by reference herein, constitute unlawful business acts and/or practices within the meaning of Nevada and California Business and Professions Codes.

61. Each of these unlawful business practices has, at a minimum, damaged Plaintiffs' creditworthiness with resulting financial loss. This misconduct has also caused Plaintiffs to suffer additional damages according to proof at trial.

62. The unlawful acts and practices, incorporated by reference herein, present a continuing threat to Defendants' home purchasers. Plaintiffs have no other remedy at law that will prevent Defendants' misconduct, as alleged herein, from occurring and/or recurring in the future.

**SIXTH CAUSE OF ACTION
CONVERSION AND DEMAND FOR ACCOUNTING
[Against All Defendants and DOES 1-25]**

63. Plaintiffs realleges and incorporates by reference the allegations of all causes of action of this Complaint, *supra* and *ante*, as if fully set forth herein.

64. Plaintiffs demand of Defendants an accounting and production of documents to verify all costs and fees for all matters related to the subject property that have been incurred since the date of trustee sale, the dates and amounts of payments made by Defendants, the dates and amounts of payments made by Plaintiffs, and the current balances for each obligation.

65. Plaintiff demands the immediate return of the converted funds, as well as interest at the legal rate on the foregoing sum. Additionally, as a direct and proximate

1 result of Defendants' acts and omissions,
2 Plaintiff has suffered economic and additional damages according to proof. Further,
3 because Defendants and each of them acted with malice and oppression, Plaintiff is
4 entitled to an award of punitive damages.

5

6 **SEVENTH CAUSE OF ACTION**
7 **INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**
8 **[Against All Defendants]**

9

10 66. Plaintiffs reallege and incorporate by reference the allegations of all
causes of action of this Complaint, *supra* and *ante*, as if fully set forth herein.

11

12 67. By engaging in the acts and omissions complained of herein, Defendants
intentionally and unreasonably inflicted emotional and/or mental distress upon
13 Plaintiffs. The acts and omissions complained of herein, committed by Defendants
14 and/or their agents, representatives or employees, were such that a reasonable member
15 of the community would find Defendants' conduct and misconduct to be outrageous.

16

17 68. Defendants were aware of their acts and omissions complained of herein,
yet they proceeded to act or fail to act in conscious or reckless disregard of the high
18 probability of causing emotional distress to Plaintiffs.

19

20 69. Plaintiffs suffered severe mental distress, suffering and anguish,
including but not limited to manifestations of physical and emotional stress, insomnia,
21 crying, fear, shock, depression and hopelessness. Their distress was and is substantial
and enduring.

22

23 70. In addition, here the extreme and outrageous character of Defendants'
conduct arose from Defendants' abuse of a business relationship with Plaintiffs which
24 gave Defendants actual or apparent authority over Plaintiffs and power to affect
25 Plaintiffs' interests in the subject property.

**EIGHTH CAUSE OF ACTION
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS
[Against All Defendants]**

71. Plaintiffs realleges and incorporates by reference the allegations of all causes of action of this Complaint, *supra* and *ante*, as if fully set forth herein.

72. By engaging in the acts and omissions complained of herein, Defendants negligently and unreasonably inflicted emotional and/or mental distress upon Plaintiffs. The acts and omissions complained of herein, committed by Defendants and/or their agents, representatives or employees, were such that a reasonable member of the community would find Defendants' conduct and misconduct to be outrageous.

73. Defendants willfully violated state and federal law, including but not limited to federal discrimination and predatory lending statutes, the business and professions and predatory lending statutes of two states, and engaged in negligent acts and omissions in conscious or reckless disregard of the high probability of causing emotional distress to Plaintiffs.

74 Plaintiffs suffered severe mental distress, suffering and anguish, including but not limited to manifestations of physical and emotional stress, insomnia, crying, fear, shock, depression and hopelessness. Their distress was and is substantial and enduring.

75. In addition, here the extreme and outrageous character of Defendants' conduct arose from Defendants' abuse of a business relationship with Plaintiffs which gave Defendants actual or apparent authority over Plaintiffs and power to affect Plaintiffs' interests in the subject property.

Defendants acted outrageously and persistently with actual malice in performing the acts alleged herein. Accordingly, Plaintiff is entitled to exemplary and punitive damages in a sum according to proof and to other such relief as requested in the Prayer for Relief.

**NINTH CAUSE OF ACTION
CONSPIRACY TO DEFRAUD and CONVERT
[Against All Defendants]**

76. Plaintiffs realleges and incorporates by reference the allegations of all causes of action of this Complaint, *supra* and *ante*, as if fully set forth herein.

77. All Defendants had a duty to provide Plaintiffs with accurate, truthful and complete information regarding the subject loan transaction, their loan modification policies and procedures, and their short sale negotiation and approval policies and procedures. Each and all Defendants acted as agents and representatives of each other.

78. From January 2008 and continuing to the present, Defendants have fraudulently misled Plaintiffs into believing that they were qualified for, and capable of performing under the terms of, that mortgage loan contract, and they fraudulently misled Plaintiffs and concealed from them material information vis a vis material terms of the loan contract, as well as the material terms of the Defendants' respective purported transfers of beneficial, trustee and/or ownership interests in the subject property.

79. By committing the acts and/or failures to act, making the representations and engaging in the concealment set forth in all causes of action of this Complaint, these Defendants and each of them acted with a common design intentionally and for the express purpose of inducing Plaintiffs to enter and remain bound by a profoundly disadvantageous mortgage loan contract designed to lead to an inevitable foreclosure.

80. Through Defendants' fraudulent acts and omissions, Defendants have conspired to commit fraud and conversion. Defendants illegally converted Plaintiffs's ownership of and/or rights to the as yet undetermined dollar amount in down payment, costs of mortgage loan and deed application, processing and execution, home purchase fees and costs, and monthly mortgage payments paid to Defendants between January

1 2008 approximately September 2010 by their fraudulent acts, omissions and
2 concealments including but not limited to: fraudulently inducing Plaintiffs to enter a
3 profoundly disadvantageous mortgage loan contract designed to lead to an inevitable
4 foreclosure; engaging in fraud and fraudulent concealment in the execution of the loan
5 and/or deed origination documents; failing to disclose to Plaintiffs the material terms
6 of the Defendants' purported transfers of beneficial, trustee and/or ownership interests,
7 and then foreclosing on and selling the subject property without executing a legal
8 assignment of the original promissory note and deed or trust; refusing to abide by
9 California's non-judicial foreclosure statutes; refusing to offer or meaningfully
10 consider Plaintiffs for loan modification, forbearance or other default avoidance
11 programs.

12 81. All Defendants acts and omissions, as set forth in all causes of action of\\
13 this Complaint (previously incorporated herein by reference) were part of a common
14 design and pattern of practice intentionally and for the express purpose of illegally
15 inflating Defendants' profits from mortgage loan and mortgage loan securities
16 transactions.

17 82 . Defendants' failure in good faith negotiate a loan modification
18 with Plaintiffs is part of a pattern and practice by these Defendants to promote
19 foreclosures and thereby increase profits. Each Defendant is an agent and
20 representative of each and every other Defendant with respect to the mortgage, deed of
21 trust, agency, assignment and delegation and/or foreclosure actions at issue in this
22 litigation.

23 . 83 . As part of this business formation and transfer of assets, Defendants,
24 with a common purpose and design in the transfer mortgage loan assets – including
25 but not limited to Plaintiffs' mortgage loan, established loan modification and
26 foreclosure policies, processes and procedures with the express purpose of
27

discouraging loan modifications, workouts and forbearances and increasing more-profitable foreclosures.

84 . Plaintiffs are informed and has reason to believe, in designing and implementing their contracts for the transfer and administration of mortgage loan assets (securitized and non-securitized), Defendants acted with a common purpose and design to unfairly inflate their profits by creating internal policies and procedures that illegally prevent and/or interfere with Plaintiffs' and other homeowners' ability to meaningfully participate in home loan modification programs provided through Nevada and federal statute.

85 . Plaintiffs are informed and has reason to believe that Defendants as a matter of pattern and practice receive profits in additional income above the actual purchase price of a home loan in foreclosure. Consequently, none of these Defendants nor their agents and/or representatives and/or co- Defendants have any meaningful intention of conducting home loan modifications or complying with state statutes that promote home loan modifications for individuals such as Plaintiffs. Any loan modification means that Defendants would lose this additional profit.

86 . As a direct and proximate result of Defendants' acts and omissions, Plaintiffs have suffered economic and additional damages according to proof. Additionally, because Defendants and each of them acted with malice and oppression, Plaintiffs are entitled to an award of punitive damages.

**TENTH CAUSE OF ACTION
UNCONSCIONABILITY**
[Against All Defendants and DOES 1-50]

87 . Plaintiffs reallege and incorporate by reference the allegations of all causes of action of this Complaint, *supra* and *ante*, as if fully set forth herein.

88 . Defendants were highly experienced mortgage industry professionals

1 who at all times herein had superior bargaining power over Plaintiffs regarding the
2 type of loan that was offered to Plaintiffs; the material terms of that loan including but
3 not limited to the interest rate(s) and repayment schedule(s); and the power of sale and
4 right to foreclose in the event of default.

5 89 . Defendants prepared the pre-printed form mortgage loan documents that
6 Plaintiffs were required to sign as a condition to obtaining the mortgage and presented
7 these form loan documents to her in a “take it or leave it” manner with no opportunity
8 for Plaintiffs to negotiate the mortgage interest or payment terms.

9 90. Defendants used misleading, incomplete, excessively complex, confusing and
10 vague form documents that could not be understood by Plaintiffs.

11 91. Defendants used their business acumen and superior bargaining power – and
12 the above-described form documents – to, without conducting any meaningful negotiations,
13 maneuver Plaintiffs into signing an adhesive contract that they did not understand.

14 92. The mortgage loan contract for the subject property is oppressive because it has
15 overly harsh and one-sided terms, and because it arose from an inequality of bargaining power
16 that resulted from not engaging in meaningful pre-execution negotiations; consequently,
17 Plaintiffs lacked meaningful choice.

18 93. The mortgage loan contract for the subject property is a contract of adhesion –
19 it is a standardized contract, imposed upon Plaintiffs without an opportunity to negotiate the
20 terms. The terms of the contract are so unreasonable, unjustified, or one-sided as to shock the
21 conscience, and it reallocates risk in an objectively unreasonable and unexpected manner.
22 Defendants have no economic justification for executing this illegal contract.

23 94. The mortgage loan contract on the subject property also is unconscionable due
24 to Defendants’ failures to adequately inform Plaintiffs of the all material terms and
25 foreseeable conditions and risks associated with executing that contract. Additionally,
26 Defendants made pre-execution misrepresentations to Plaintiffs that, *inter alia*, they would be

able to refinance the loans.

95. The mortgage loan contract prepared by Defendants is illegally one-sided and allows Defendants enjoy usurious profits flowing from non-negotiable interest rates. Plaintiffs can never fully realize home ownership because she could never repay a mortgage which, by its terms, guaranteed a foreclosure.

96. As a direct and proximate result of Defendants' acts and omissions, Plaintiff suffered economic and additional damages according to proof. Additionally, because Defendants and each of them acted with malice and oppression, Plaintiff is entitled to an award of punitive damages.

**ELEVENTH CAUSE OF ACTION
QUIET TITLE
[Against All Defendants]**

97. Plaintiff realleges and incorporates by reference the allegations of all causes of action of this Complaint, *supra* and *ante*, as if fully set forth herein.

98. Plaintiff seeks to establish title against all adverse claims to his interest in the subject property. Plaintiff maintains that they are the only legal owners of the subject property through two deeds of trust granting the subject property to Plaintiffs, and recorded in the Official Records of the County of Clark, Nevada, in January 2008. None of the Defendants has any right, title, interest, lien or estate in or on the subject property. Plaintiffs' interests are adverse to each Defendants' claims of ownership.

99. Plaintiffs seek to quiet title as of January 10, 2008, when they received the deeds of trust on the subject real property. Plaintiffs seek to quiet title against the claims of all Defendants and each of them. Plaintiffs therefore seek a judicial declaration that the title to the subject property is vested in them alone, and that Defendants be declared to have no estate, right, title, lien or interest in the Subject Property and be forever enjoined from asserting any estate, right, title, lien or interest

1 in the subject property adverse to Plaintiffs.
2

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs Michael D. Dunn and Maria Do Carmo Dunn pray for
5 judgment as follows:

- 6 1. For general damages in an amount over \$10,000 according to proof;
- 7 2. For compensatory damages according to proof;
- 8 3. For special damages according to proof;
- 9 4. For exemplary and punitive damages according to proof;
- 10 5. For costs of suit herein incurred;
- 11 6. For an Order enjoining and/or restraining defendants from proceeding
12 with any sale, transfer, unlawful detainer or any other action pertaining to
13 the subject real property unless without meaningfully and in good faith
14 offering Plaintiffs a loan modification;
- 15 7. For an award to Plaintiff for monetary damages against all Defendants
16 jointly, severally, that Plaintiff incurred due to the need to bring this
17 action for injunctive relief according to proof;
- 18 8. For awards of statutory damages to Plaintiffs according to proof;
- 19 9. For attorneys fees as permitted by law;
- 20 10. For treble damages as permitted by law;
- 21 11. For prejudgment interests as permitted by law; and
- 22 12. For such other and further relief as the court may deem proper.

23
24 Dated: February 27, 2011 /s/ Jamilla Moore /s/
25
26 JAMILLA MOORE
27 Attorney for Plaintiffs